IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	)
	)
Matthews III, et al.	) Group Art Unit: 2173
	)
Serial No. 09/422,654	) Examiner: B. Huynh
	)
Filed: October 22, 1999	) Atty. Dkt. No. 003797.84665
	)
For: USER FRIENDLY REMOTE SYSTEM	)
INTERFACE WITH MENU HIGHLIGHTING	)

APPEAL BRIEF

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Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

This is an Appeal Brief in accordance with 37 C.F.R. § 1.192, filed in triplicate in support

of Appellants' June 28, 2002, Notice of Appeal. Appeal is taken from the final Office Action

mailed January 28, 2002 (paper no. 14). Please charge any necessary fees in connection with this

Appeal Brief to our Deposit Account No. 19-0733.

I. REAL PARTY IN INTEREST

The owner of the above-identified application, and the real party in interest, is Microsoft

Corporation.

II. RELATED APPEALS AND INTERFERENCES

This appeal is related to a currently pending appeal in U.S. Patent Application Number

09/954,167, of which this application is a co-divisional application.

III. STATUS OF CLAIMS

Claims 40-48 are rejected. Claims 40-48 are appealed. All of the pending claims are being appealed and are shown in the attached Appendix.

The final Office Action rejected all of the pending claims as follows:

- All of the pending claims (claims 40-48) were rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter not described in the specification;

- all of the pending claims (claims 40-48) were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,463,727 to Wiggins et al. ("Wiggins").

IV. STATUS OF AMENDMENTS

No amendments were filed subsequent to the final rejection dated January 28, 2002.

V. SUMMARY OF INVENTION

The specification describes a user interface for a computer operating system which provides different operating modes and enhanced features. (Specification, p. 1, "Field of the Invention"). Input devices such as keyboards may be employed such that by pressing a button, for example, a menu may be caused to be shown. (Specification, p. 4, lines 9-11). One problem particularly with large-screen displays is that menu selection choices are not adequately distinguishable from the background such that selection of a menu choice may not be clearly distinguished against a moving background, for example. (Specification, p. 4, lines 13-18).

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Aspects of the present invention provide for enhanced highlighted menu choices in such an environment wherein a system comprises a device with a start button or menu button which allows a user to quickly pick between available applications or tasks. (Specification, p. 7, lines 4-7). In other aspects of the present invention, highlighting selections of a selection menu is provided so as to enable a user to determine easily from a distance the current position of a selection menu, for example, by way of highlighting the current selection through the use of a focus frame, an enlarged frame encircling the current selection. (Specification, p. 8, lines 3-8). For example, the size of the focus frame may be controlled in the operating system through border parameters or box width parameters. (Specification, p. 31, lines 12-13), including an "x-border" or "y-border" parameter. (Specification, p. 31, line 15). Border parameters may be set to result in space between shapes of the focus frame increasing or decreasing as needed. (Specification, p. 31, lines 16-19, p. 32, line 1, and Figure 17). Border parameters may also include parameters associated with the width which may adjust the width of the focus frame, for example. (Specification, p. 32, lines 2-6).

In making reference herein to various portions of the specification and drawings in order to explain the claimed invention (as required by 37 C.F.R. § 1.192(c)(5)), Appellants do not intend to limit the claims; all references to the specification and drawings are illustrative unless otherwise explicitly stated. Also, references herein to various embodiments disclosed in the specification and drawings are not intended to limit the disclosed structures that correspond to those claim elements, if any, that might be interpreted as means-plus-function recitations.

VI.   **ISSUES**

1.   Whether claims 40-48 are supported by the specification under 35 U.S.C. § 112, first paragraph.

2.   Whether claims 40-48 are patentable, under 35 U.S.C. § 103(a), over Wiggins.

VII.   **GROUPING OF CLAIMS**

Claims 40-48 stand or fall together.

VIII.   **ARGUMENT**

A.   **Claims 40-48 are Supported by the Specification Under 35 U.S.C. § 112, First Paragraph.**

The Examiner argues that the features recited in claims 40-48, directed to a system for highlighting a current selection, are not found in the specification as filed. (*See*, the Supplemental Final Office Action, paper number 14, p. 2). Specifically, the Examiner asserts that the specification fails to provide a detailed description of the now claimed limitation "each shape being separated from an adjacent shape by a spacing distance based on border parameters." Supplemental Final Office Action, paper number 14, p. 2). Appellants respectfully traverse.

Independent claims 40, 43 recite highlighting a current selection comprising a display for displaying a list of menu options in response to a start or menu button, each option residing in a shape, one of said list being the current selection, each shape being separated from an adjacent shape by a spacing distance based on border parameters.

Independent claim 46 recites a computer-readable medium having computer executable instructions for performing steps comprising displaying a list of menu options in response to a start or menu button, each option residing in a shape, one of said list being the current selection, each shape being separated from an adjacent shape by a spacing distance based on border parameters.

The recited "each shape being separated from an adjacent shape by a spacing distance based on border parameters" is supported by the specification. For example, according to the specification at page 31, a focus frame highlights a selection (Specification, p. 31, lines 1-2) and the size of the focus frame is specified by controlling border spacing parameters. (Specification, p. 31, lines 12-13). Three exemplary border parameters are disclosed that may be controlled to create the appearance of a focus frame. (Specification, p. 31, lines 13-14, and Figure 17). The specification further discloses that two border parameters, "x-border" parameter and "y-border" parameter, represent the spacing between elements in the x and y directions, respectively. (Specification, p. 31, lines 15-16). By increasing the x-border and y-border values, the spacing between the shapes (1701, 1702, 1703, and 1704) may be increased. (Specification, p. 31, lines 18-19 and p. 32, line 1). The specification further discloses an exemplary third adjustable parameter which allows adjustment of the width of the focus frame surround the selection. (Specification, p. 32, lines 2-3).

As can also be seen in Figure 17, a list of menu options is illustrated, each option residing in a shape, one of said list being the current selection, each shape being separated from an adjacent shape by a spacing distance based on the border parameters.

Independent claims 40, 43, and 46 and dependent claims 41-42, 44-45, and 47-48 are thus supported by the specification, and the rejection thereof under the first paragraph of 35 U.S.C. § 112 is improper.

B. Claims 40-46 are Patentable, under 35 U.S.C §103(a), Over <u>Wiggins</u>

Independent claims 40 and 43 and dependent claims 41, 42, 44 and 45 recite highlighting a current selection comprising a display for displaying a list of menu options in response to a start or menu button, each option residing in a shape, one of said list being the current selection, each shape being separated from an adjacent shape by a spacing distance based on border parameters.

Independent claim 46 and dependent claims 47-48 recite a computer-readable medium having computer executable instructions for performing steps comprising displaying a list of menu options in response to the reception of a signal corresponding to a start or menu button with each option residing in a shape where one of said list being the current selection, and wherein each shape is separated from an adjacent shape by a spacing distance based on border parameters.

Wiggins does not teach or suggest each shape being separated from an adjacent shape by a spacing distance based on border parameters. Wiggins does not teach or suggest border parameters at all. The Examiner asserts that "in response to the argument, each of the menu options 11-16 resides in a rectangular shape, wherein each shape being separated from adjacent

shape by a spacing distance based on border parameter (figure 1)." (Supplemental Final Office Action dated January 28, 2002, page 4, second paragraph). However, contrary to the Examiner's assertions, Wiggins does not teach or suggest border parameters or each shape being separated from an adjacent shape by a spacing distance based on border parameters. Figure 1 in the Wiggins' disclosure illustrates menu items separated by a distance, however, there is no teaching or suggestion of each shape being separated from an adjacent shape by a spacing distance based on border parameters. Wiggins discloses that the screen includes a display of a plurality of menu choices in the form of rectangular icons 11-16. The menu choices may be selected with a rectangular icon illustrated as having been selected by a rectangular outline (column 3, lines 20-30). Despite the Examiner's contentions, there is no teaching of border parameters anywhere in Wiggins.

Although a selection may be within a shape as Wiggins demonstrates in figure 1, Wiggins does not teach or suggest the nature of separation of adjacent shapes much less border parameters. Wiggins merely draws a band around an icon without regard to border parameters at all because Wiggins does not teach or suggest border parameters.
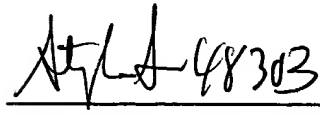
Thus, the *prima facie* case of obviousness fails. The rejection of claims 40-48 under 35 U.S.C. § 103(a) should be reversed.

IX.   CONCLUSION

For all of the foregoing reasons, Appellants respectfully submit that the final rejection of claims 40-48 is improper and should be reversed.

Respectfully submitted,

Dated: September 3, 2002

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APPENDIX

CLAIMS INVOLVED IN THE APPEAL

40. A system for highlighting a current selection comprising:

a storage for storing a list of menu options;

a display for displaying the list of menu options in response to a start or menu button, each option residing in a shape, one of said list being the current selection, each shape being separated from an adjacent shape by a spacing distance based on border parameters;

a processor for determining which of said list of menu options is the current selection, for enlarging the size of said shape, and for controlling said display to display said enlarged shape surround said current selection.

41. The system according to claim 40, wherein the shape is a rectangle.

42. The system according to claim 40, where said processor alters the size of said shape by altering a registered window size applied to the current selection.

43. A method for highlighting a current selection comprising the steps of:

displaying the list of menu options in response to the reception of a signal corresponding to a start or menu button with each option residing in a shape where one of said

list being the current selection, and wherein each shape is separated from an adjacent shape by a spacing distance based on border parameters;

determining by a processor which of said list of menu options is the current selection;

enlarging the size of said shape surrounding said current selection; and,

controlling said display to display said enlarged shape surrounding said current selection.

44.   The method according to claim 43, wherein the shape is a rectangle.

45.   The method according to claim 43, where said enlarging step enlarges the size of said shape by altering a registered window size applied to the current selection.

46.   A computer-readable medium having computer executable instructions for performing steps comprising:

displaying the list of menu options in response to the reception of a signal corresponding to a start or menu button with each option residing in a shape where one of said list being the current selection, and wherein each shape is separated from an adjacent shape by a spacing distance based on border parameters;

determining by a processor which of said list of menu options is the current selection;

enlarging the size of said shape surrounding said current selection; and,

controlling said display to display said enlarged shape surrounding said current selection.

47.   The computer-readable medium of claim 46 wherein said computer-executable instructions define the shape as a rectangle.

48.   The computer-readable medium of claim 46 wherein said computer-executable instructions for performing the enlarging step enlarges the size of said shape by altering a registered window size applied to the current selection.